

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

John Ethan Rahl,

Debtor.

Case No.: 96-12875

Chapter 13

APPEARANCES:

John Ethan Rahl
Debtor Pro Se
6 Fairview Avenue
P.O. Box 460
Rosendale, New York 12472

Gould & Wilkie
Attorneys for Creditor
Central Hudson Gas & Electric Corporation
One Chase Manhattan Plaza
New York, New York 10005

Robert T. Barnard, Esq.
of Counsel

Andrea E. Celli, Esq.
Chapter 13 Standing Trustee
350 Northern Boulevard
Albany, New York 12204

Diane Davis, Esq.
of Counsel

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is a motion by John Rahl (“Debtor”) objecting to the claim of Central Hudson Gas & Electric Corporation (“Central Hudson”). The Chapter 13 Trustee (“Trustee”) does not take a position on the objection.

Facts

The facts follow:

1. On May 31, 1996, the Debtor filed a voluntary Chapter 13 petition.

2. The first meeting of creditors was scheduled for July 22, 1996; the deadline to file a proof of claim was October 21, 1996.
3. The Creditor filed its proof of claim on June 28, 1996.
4. On January 22, 1997, the Debtor's Chapter 13 plan was confirmed.
5. On March 20, 1997, the Trustee served the Notice of Claims Filed. Pursuant to Local Bankruptcy Rule 3007-1, barring a time extension, any objection to the filed claims must be filed and served within 90 days of the service of this notice.
6. The Debtor made no objection to Central Hudson's claim within that time frame.
7. On June 30, 1998, the Debtor made a Motion for Judgment Against Central Hudson for \$409,682.82. The court's docket indicates that this is the first pleading containing an objection to Central Hudson's claim.
8. On July 13, 1998, Central Hudson responded, asserting that the Debtor's motion was untimely and not in proper form.
9. On July 16, 1998, a hearing was held and the court denied, without prejudice, the Debtor's motion. At this hearing, the court informed the Debtor that to obtain the requested relief an adversary proceeding, seeking the recovery of money or property, needed to be commenced and that time was of the essence.
10. The Debtor did not file the adversary proceeding.
11. On March 29, 1999, Central Hudson moved to lift stay to allow the commencement of an eminent domain proceeding in the state Supreme Court. On April 29, 1999, the court heard this motion and adjourned it to a later date.
12. On May 26, 1999, the Debtor objected, by motion, to Central Hudson's claim. On June 10, 1999, the court denied this motion because the relief sought could not be requested by a motion; an adversary proceeding needed to be filed.
13. On August 25, 1999, the court heard additional arguments and granted Central Hudson's adjourned lift stay motion. The order reflecting this

determination was docketed on September 1, 1999.

14. On September 13, 1999, the Debtor made a motion to reconsider the lift stay order. An evidentiary hearing was scheduled for February 15, 2000.
15. On February 15, 2000, the evidentiary hearing was held and the court reserved decision. On August 21, 2000, the court issued a memorandum, decision and order denying the Debtor's request for reconsideration.
16. On November 20, 2000, the Debtor moved for an order restraining the Trustee from disbursing to Central Hudson to enable the Debtor time to file an adversary proceeding. On December 14, 2000, the court denied the motion, without prejudice.
17. On December 28, 2000, the Debtor made the exact request that had been denied on December 14, 2000: a motion for an order restraining the Trustee from disbursing to Central Hudson to enable the Debtor time to file an adversary proceeding.
18. On February 1, 2001, this court heard the motion and reserved decision.

Argument

The Debtor argues that Central Hudson is a trespasser on his property and that it owes him more money, due to this trespass, than he owes Central Hudson. The Debtor appears to be arguing that he is entitled to something akin to a setoff.

In response, Central Hudson first contends that the Debtor's objection is procedurally defective because the time to file a such an objection expired several years ago. Furthermore, it argues that the objection is unsupported because the Debtor is not taking exception with the amount of the claim nor is he contending that he did not receive the electrical services that form its basis.

Discussion

Central Hudson first argues that the court should not entertain the Debtor's objection

because he failed to make it within the time requirements of Local Bankruptcy Rule 3007-1. This Local Rule states in part,

- (b) Claim Objections in Chapter 12 and 13 Cases. Absent a court order approving an extension of time, objections to claims in chapter 12 and 13 cases must be filed and served within 90 days of the trustee's service of the "Notice of Claims Filed" in the Albany court ...

Here, the Notice of Claims Filed was served on March 20, 1997, yet the Debtor did not indicate his dispute with this claim until July 16, 1998.

The court agrees with Central Hudson's contention that strict adherence with Local Rules is required for the court's efficient administration and that violations of them, ordinarily, should not be excused or overlooked. However, the Second Circuit has made it clear that a " ... court has the inherent power to decide when the departure from its Local Rule should be excused or overlooked." *Somlyo v. J. Lu-Rob Enterprises, Inc.*, 932 F.2d 1043, 1047 (2d. Cir 1991). Due to the overriding need for finality¹ in this matter, the court will overlook the violation of the Local Rule and address the merits of the Debtor's objection.

Bankruptcy Rule 3001 governs the filing of a proof of claim and subsection (f) states, "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Furthermore, courts have determined that to overcome this prima facie evidence, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim. *In re Allegheny Int'l, Inc.*, 954 F.2d 167 (3d. Cir. 1992). Here, the allegation essential to the claim is that the Debtor received electrical services that he did not pay for. The Debtor has not

¹This is the third time that the present motion, in some form or another, has been before the court; it has been denied, without prejudice, all previous times.

come forth with any evidence to refute and overcome the prima facie evidence of the validity of this claim.

As noted, the gravamen of the Debtor's argument sounds in setoff. This court acknowledges the Debtor's argument and can understand his frustration; the court is convinced that the Debtor honestly believes that his rights are being infringed. However, the Debtor is not arguing that he did not receive electrical services from Central Hudson nor does he dispute the amount owed for this service. The Debtor is attempting to transform his alleged claim in trespass into an objection to Central Hudson's claim. However, the competing claims are separate and distinct and the relief desired by the Debtor cannot be obtained in this manner. Since the Debtor's contentions do not rise to the level of an objection to claim his motion is denied, with prejudice; the court will not entertain this motion again.

The Trustee is directed to disburse payment to Central Hudson in the ordinary course.

It is so ORDERED.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Court